

3 FAM 4700

GRIEVANCES-CIVIL SERVICE

3 FAM 4710

GENERAL PROVISIONS

(CT:PER-701; 07-29-2013)
(Office of Origin: HR/G)

3 FAM 4711 AUTHORITY

(CT:PER-701; 07-29-2013)
(State Only)
(Applies to Civil Service Employees)

The procedures in these chapters are established in consonance with 5 U.S.C. 1302, 5 U.S.C. 3301, and 5 U.S.C. 3302.

3 FAM 4712 COVERAGE

(CT:PER-701; 07-29-2013)
(State Only)
(Applies to Civil Service Employees)

- a. Any Civil Service employee of the Department who is not covered by a negotiated grievance procedure may use the procedure in these regulations to appeal any matter of concern or dissatisfaction subject to the control of the Department relating to the employment of that employee where there has been a misapplication or violation of law, regulation or written policy.
- b. U.S. citizen Foreign Service employees are covered under regulations for employee grievances contained in 3 FAM 4400.
- c. Locally employed staff (LE staff) are covered by procedures established at individual posts pursuant to 3 FAM 7290.

3 FAM 4713 RESPONSIBILITIES

(CT:PER-701; 07-29-2013)

(State Only)

(Applies to Civil Service Employees)

The Director of the Grievance Staff (HR/G) is responsible for administration of, and serves as a consultant on, the grievance procedure and has custody of the records on all formal grievances.

3 FAM 4714 POLICY

(CT:PER-701; 07-29-2013)

(State Only)

(Applies to Civil Service Employees)

- a. Employment-related issues of concern or dissatisfaction to employees are most swiftly and effectively resolved through open communication and willingness of employees and supervisors to work together. Resolving disputes early and informally fosters greater harmony and reduces organizational costs associated with an administrative process.
- b. Employees are free to address employment-related concerns through mechanisms other than the grievance process described in this chapter; for example, by contacting their division or office managers, the Office of the Ombudsman, the Office of Civil Rights (for discrimination concerns), their servicing human resources office, or other appropriate office.
- c. Supervisors should encourage employees under their supervision to discuss grievances with them and should endeavor in every way practicable to resolve them.
- d. An employee must pursue resolution through the informal grievance procedures before submitting a formal grievance except as provided in 3 FAM 4727.
- e. Each employee has freedom to seek adjudication of a grievance without fear of interference, coercion, or reprisal. This policy applies equally to any employee taking part in the presentation and adjudication of a grievance.

3 FAM 4714.1 MATTERS EXCLUDED

(CT:PER-701; 07-29-2013)

(State Only)

(Applies to Civil Service Employees)

The Administrative Grievance System described in this chapter does not apply to:

- (1) Matters outside the administrative discretion of the Department;
- (2) The content of published Departmental policies;
- (3) Any matter subject to a formal review and adjudication by the Merit

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Systems Protection Board (MSPB), the Office of Personnel Management (OPM), the Federal Labor Relations Authority (FLRA), or the Equal Employment Opportunity Commission (EEOC). Such matters include but are not limited to:

- (a) Adverse action, except suspension of 14 days or less;
 - (b) Reduction in grade or removal for unacceptable performance;
 - (c) Denial of a within-grade salary increase (WGI);
 - (d) Allegation or complaint of discrimination;
 - (e) Position classification; and
 - (f) Reduction-in-force action (RIF).
- (4) Matters for which other avenues of appeal have been established, and whether or not subject to final administrative review outside the Department, such as:
- (a) Security (See 3 FAM 2220 and 12 FAM 230);
 - (b) Negative acceptable level of competence determination and Within-Grade Increase (WGI) denial (See 5 CFR 531 and 3 FAM 3124);
 - (c) Medical clearances (See 16 FAM 215); and
 - (d) Debt collection (See 22 CFR 34 Subpart B).
- (5) Matters administered by the General Accountability Office (GAO) or the Office of Workers' Compensation Programs (OWCP);
- (6) Office of Inspector General (OIG) evaluations or reports (see 22 U.S.C. 3929);
- (7) Prohibited Personnel Practices Claims (see 5 U.S.C. 1211 et seq.);
- (8) Appointment of a re-employed annuitant;
- (9) Termination of temporary or term promotion that returns the employee to the position from which the employee was temporarily promoted, or reassigns or demotes the employee to a different position that is not at a lower grade or pay than the position from which temporarily promoted;
- (10) Non-selection for promotion from a group of properly ranked and certified candidates or for non-competitive promotion;
- (11) The return from an initial appointment as supervisor or manager to a non-supervisory or non-managerial position for failure to satisfactorily complete the probationary period under 5 U.S.C. 3321(a)(2) and 5 C.F.R. Part 315, Subpart I;
- (12) Performance Improvement Plan;
- (13) Performance counseling or Mandatory Mid-Year Performance Review;
- (14) Substance of critical elements and performance standards established in

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accordance with 5 U.S.C. 43, subchapter 1;

- (15) Grant of, or failure to grant, a performance, recognition, or honor award, or the adoption of or failure to adopt an employee suggestion or invention;
- (16) Receipt of, or failure to receive, a quality-step increase;
- (17) Merit pay determinations;
- (18) Termination of temporary appointment;
- (19) Separation during a probationary or trial period;
- (20) Separation actions not excluded by 3 FAM 4714, subparagraph (3);
- (21) The following matters specific to Senior Executive Service (SES):
 - (a) Return of an employee from SES to General Schedule (GS) or another pay system during the 1-year probationary period for less than fully satisfactory executive performance under 5 U.S.C. 3592;
 - (b) Reassignment of SES appointee following receipt of an unsatisfactory rating under 5 U.S.C. 4314 and 3 FAM 2400;
 - (c) Termination of SES career appointee during the probationary period for unsatisfactory performance under 5 CFR 359, subpart D; and
 - (d) Unacceptable performance appraisal of SES career appointee (see 5 U.S.C. 4312(d.)).
- (22) A preliminary warning notice of an action that has not yet taken place (e.g., letter of warning, caution or counseling; proposal notice of an adverse or disciplinary action; intent to deny WGI);
- (23) Letter of admonishment; and
- (24) Action taken in accordance with the terms of a formal agreement voluntarily entered into by an employee.

3 FAM 4715 DEFINITIONS

(CT:PER-701; 07-29-2013)

(State Only)

(Applies to Civil Service Employees)

Alternative Dispute Resolution (ADR) is a process conducted by a third party to assist in the resolution of conflicts between people or organizations.

Bargaining unit employee means an employee included in an appropriate exclusive bargaining unit, as determined by the Federal Labor Relations Authority, for which a labor organization has been granted exclusive recognition.

Days means calendar days and not workdays.

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Grievance is a matter of concern or dissatisfaction subject to the control of the Department relating to the employment of the grievant, or a group of employees acting as individuals, where there has been a misapplication or violation of law, regulation or written policy, including any allegation of coercion, reprisal or retaliation for having filed a grievance or participated in the grievance process, except as described under Matters Excluded. A grievance must specify the personal relief requested.

Grievance Examiner is an individual authorized by the Deputy Assistant Secretary (DAS) for Human Resources to analyze grievances, conduct inquiries, and make recommendations concerning case disposition.

Grievance Staff is the unit of the Bureau of Human Resources (HR) responsible for assisting the responsible Deputy Assistant Secretary (or his or her designee) in reviewing and deciding grievances filed under this section.

Negotiated grievance procedure, negotiated by a labor union and the Department, must be the exclusive procedure available to bargaining unit employees for resolving grievances, which fall within its coverage.

Personal Relief is a specific remedy directly benefitting the grievant, but may not include a request for disciplinary or other action directly affecting another employee. Failure of a grievant to request personal relief may be grounds for rejection of the grievance.

Responsible Official is the individual at each stage of the grievance process who may make a decision on the matter being grieved.

3 FAM 4716 REPRESENTATION

(CT:PER-701; 07-29-2013)

(State Only)

(Applies to Civil Service Employees)

An employee has a right to be accompanied, represented, and advised by a representative of his/her choice at any stage of a grievance.

The grievant must notify the Responsible Official considering the grievance, in writing, of his/her designated representative and provide the representative's contact information.

The Department may disallow a representative if it determines that the representative designated:

- (1) Has a conflict-of-interest or conflict-of-position;
- (2) Is required for other work to meet priority needs of the agency; or
- (3) Gives rise to unreasonable delays in the processing of the grievance or unreasonable costs to the Government.

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Disallowance of a representative must be communicated to the employee in writing along with notification that the employee may request reconsideration of the disallowance by submitting a written request to the DAS for HR within five days of the receipt of the notice of disallowance.

Upon proper designation of a representative, agency communication related to the grievance must be directed towards the representative rather than the employee.

3 FAM 4717 RESOLUTION

(CT:PER-701; 07-29-2013)

(State Only)

(Applies to Civil Service Employees)

- a. Nothing in this policy prohibits reasonable attempts by managers and employees to resolve a grievance at any stage in the process. Informal resolutions are encouraged at any time and must be communicated in writing to the Responsible Official who is then considering the grievance.
- b. The employee may withdraw the grievance for any reason by written notification to the Responsible Official who is then considering the grievance.

3 FAM 4717.1 ALTERNATIVE DISPUTE RESOLUTION

(CT:PER-701; 07-29-2013)

(State Only)

(Applies to Civil Service Employees)

- a. An employee may request Alternative Dispute Resolution (ADR) to resolve a matter of dissatisfaction prior to or in connection with the administrative grievance process. When an employee and participating manager agree to seek ADR assistance, either may contact the Office of the Ombudsman to make arrangements.
- b. ADR may not be appropriate for some grievable matters. Although Responsible Officials are encouraged to participate in ADR, participation is voluntary.
- c. The deadline for initiating the informal grievance process will not be delayed in order to pursue ADR; however, as provided by 3 FAM 4722 and 3 FAM 4724, the timeline for responding to an informal grievance may be suspended to allow time for ADR.

3 FAM 4718 THROUGH 4719 UNASSIGNED